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April 20, 2005
T.R.A. DOCKET ROOM

Guy M. Hicks
General Counsel
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VIA HAND DELIVERY

Hon. Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re *Petition to Establish Generic Docket to Consider Amendments to
Interconnection Agreements Resulting from Changes of Law*
Docket No. 04-00381

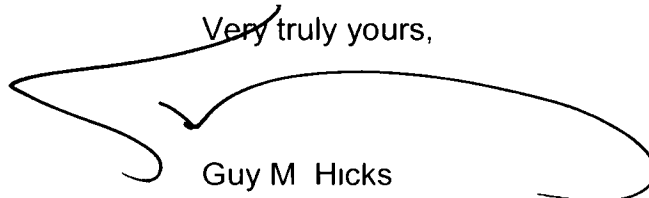
Dear Chairman Miller:

Consistent with the FCC's explicit ban on UNE-Ps in the TRRO, the North Carolina Utilities Commission has recently rejected the emergency motion filed by certain CLECs seeking to continue the UNE-P regime. A copy of that Order is attached.

Also, in its letter of April 6, 2005, BellSouth reported that the Florida Public Service Commission had voted unanimously to reject the CLECs' emergency motions with respect to the "no new adds" issue. At that time, there was no documentation available memorializing that decision. Enclosed for the Authority's information is a vote sheet and excerpt from the Florida Commission hearing transcript memorializing its vote. BellSouth understands that a written order will be forthcoming from the Florida Commission.

Copies of the enclosed are being provided to counsel of record.

Very truly yours,



Guy M. Hicks

GMH:ch

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO P-55, SUB 1550

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Complaints Against BellSouth)	
Telecommunications, Inc Regarding)	NOTICE OF DECISION AND ORDER
Implementation of the Triennial Review)	
Remand Order)	

HEARD IN Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, Wednesday, April 6, 2005

BEFORE Commissioner Sam J Ervin, IV, Presiding
Chair J Anne Sanford
Commissioner J Richard Conder
Commissioner Lorinzo L. Joyner
Commissioner James Y Kerr, II
Commissioner Howard N Lee
Commissioner Robert V. Owens, Jr

APPEARANCES.

For BellSouth Telecommunications, Inc .

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For The Using and Consuming Public

Lucy E. Edmondson
Public Staff— North Carolina Utilities Commission
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BY THE COMMISSION. On February 4, 2005, the Federal Communications Commission (FCC) released its permanent unbundling rules in the Triennial Review Remand Order (TRRO), FCC Docket No. WC-04313 and CC 01-338. The TRRO identified a number of former Unbundled Network Elements (TINEs), such as switching, for which there is no Section 251 unbundling obligation.¹ In addition to switching, former UNEs include high capacity loops in specified central offices,² dedicated transport between a number of central offices having certain characteristics,³ entrance facilities,⁴ and dark fiber.⁵ The FCC, recognizing that it removed significant unbundling obligations formerly placed on incumbent local exchange carriers, adopted transition plans to move the embedded base of these former UNEs to alternative serving

¹ TRRO, ¶ 199 ("Applying the court's guidance to the record before us, we impose no section 251 unbundling requirement for mass market local circuit switching nationwide.") (footnote omitted)

² TRRO, ¶ 174 (DS3 loops), 178 (DS1 loops).

³ TRRO, ¶ 126 (DS1 transport), 129 (DS3 transport)

⁴ TRRO, ¶ 137 (entrance facilities)

⁵ TRRO, ¶ 133 (dark fiber transport), 182 (dark fiber loops).

arrangements⁶ In each instance, the FCC stated that the transition period for each of these former UNEs — loops, transport, and switching — would commence on March 11, 2005.⁷

On February 28, 2005, ITC^DeltaCom Communications, Inc (DeltaCom) filed a letter with the Commission that it had sent to BellSouth Telecommunications, Inc. (BellSouth) on February 21, 2005 on behalf of itself and Business Telecom, Inc. (BTI). The letter responded to a carrier notification letter dated February 11, 2005 in which BellSouth outlined actions it planned to take in light of the FCC *TRRO*. DeltaCom argued that the *TRRO* did not allow BellSouth to refuse UNE-P orders associated with the embedded base of UNE-P customers or orders for new UNE-P customers on its effective dates

On March 1, 2005 MCImetro Access Transmission Services LLC (MCI) filed a Motion for Expedited Relief Concerning UNE-P Orders that set forth similar arguments to those alleged by DeltaCom in its February 28, 2005 letter. MCI asked the Commission to order BellSouth to continue to accept and process MCI's UNE-P orders after March 11, 2005

Likewise, on March 2, 2005 NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III, and Xspedius Communications LLC (collectively, Joint Petitioners) filed a Petition for Emergency Declaratory Ruling based on similar grounds to those set forth by DeltaCom and MCI. In addition, the Joint Petitioners alleged that they had executed a separate agreement with BellSouth through which BellSouth was required to allow access to all de-listed UNEs after March 11, 2005

On March 3, 2005 the Commission consolidated these filings in a single docket — Docket No. P-55, Sub 1550— and ordered BellSouth to respond to the MCI and Joint Petitioners' motions by March 8, 2005. The Commission also set the dispute for oral argument on March 9, 2005

On March 4, 2005 LecStar Telecom filed with the Commission its February 24, 2005 responsive letter to BellSouth's February 11 carrier notification letter, and CTC Exchange Services, Inc (CTC) filed Comments in Support and Request for Expanded Relief. On March 7, 2005 Amerimex Communications Corp. filed an Emergency Petition seeking relief similar to that sought by MCI and the Joint Petitioners, and US LEC of North Carolina, Inc (US LEC), Time Warner Telecom of North Carolina, LP and XO North Carolina filed a Supportive Petition

On March 8, 2005 BellSouth sought an extension of time within which to both respond in writing to the various filings described above and to participate in the oral argument. Attached to BellSouth's motion was a new carrier notification letter issued by

⁶ *TRRO*, ¶ 142 (transport), 195 (loops), 226 (switching).

⁷ *TRRO*, ¶ 143 (transport), 196 (loops) 227 (switching).

BellSouth on March 7, 2005 in which BellSouth extended the deadline for accepting "new adds" as they relate to the delisted UNEs until the earlier of 1) an order from an appropriate body, either a commission or a court, allowing BellSouth to reject these orders, or 2) April 17, 2005 "

On March 8, 2005 the Commission issued an order rescheduling the oral argument for April 6, 2005, and granting BellSouth an extension until March 15, 2005, to respond to the various motions, complaints and letters that had been received in this docket

On March 9, 2005 the Commission received a letter from CTC in which it advised the Commission that it would rely on its written comments and the arguments of other CLPs and accordingly would not participate in the oral argument. On the same date, the Commission received a copy of a letter from Navigator Telecommunications to BellSouth dated February 28, 2005, in which Navigator objected to BellSouth's proposed implementation of the *TRRO*.

On March 14, 2005, BellSouth moved to strike the filing by Amerimex Communications Corp on the grounds that the filing had not been signed by an attorney licensed to practice in North Carolina. The Commission subsequently concluded that good cause existed to grant the motion unless Amerimex cured the deficiency noted by BellSouth by March 31, 2005. Amerimex withdrew its Emergency Petition on March 22, 2005, stating that it had entered into a commercial agreement with BellSouth that mooted its Petition.

On March 15, 2005, BellSouth filed its responses to the relief sought by MCI, Joint Petitioners and the other parties listed above. On March 16, 2005, AT&T of the Southern States, LLC (AT&T) asked the Commission, to the extent it awarded any relief to the various petitioners, to award the same relief to AT&T. Prior to the oral argument, the Commission received several submissions from the parties conveying "supplemental authority" supporting their various positions.

Oral argument took place as scheduled on April 6, 2005, Counsel for various parties appeared at that time and argued their respective positions before the full Commission. At the conclusion of the argument, the Presiding Commissioner asked the parties to submit post-argument briefs and/or proposed orders. MCI, US LEC, BellSouth, Joint Petitioners, Public Staff, and CTC made post-hearing filings.

CONCLUSIONS

After having carefully considered all the arguments and written submissions by all the parties in this docket, the Commission concludes that good cause exists as to the following:

1 With respect to the provision of UNE-P, DS1, and DS3, the Commission declines to declare that BellSouth must provide "new adds" of these UNEs outside of

the embedded customer base. Nevertheless, BellSouth must continue to process orders for the existing base of CLP customers pending completion of the transition process

2 With respect to the issue of the provision of loop and transport, the Commission finds that the representations of BellSouth at the oral argument that it will allow the procedures outlined therefor in the TRRO renders this issue moot

IT IS, THEREFORE, SO ORDERED

ISSUED BY ORDER OF THE COMMISSION

This the 15th day of April, 2005

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

Pb041405 03

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

APRIL 5, 2005

RE: Docket No. 041269-TP - Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.
Docket No. 050171-TP - Emergency petition of Ganoco, Inc. d/b/a American Dial Tone, Inc. for Commission order directing BellSouth Telecommunications, Inc. to continue to accept new unbundled network element orders pending completion of negotiations required by "change of law" provisions of interconnection agreement in order to address the FCC's recent Triennial Review Remand Order (TRRO)
Docket No. 050172-TP - Emergency petition of Ganoco, Inc. d/b/a American Dial Tone, Inc. for Commission order directing Verizon Florida Inc. to continue to accept new unbundled network element orders pending completion of negotiations required by "change of law" provisions of interconnection agreement in order to address the FCC's recent Triennial Review Remand Order (TRRO)

Issue 1: Should the Commission grant BellSouth's Motion to Consolidate Docket No. 050171-TP into Docket No. 041269-TP?

Recommendation: No. Staff does not believe it is necessary to consolidate these dockets. However, the petition of American Dial Tone is substantially similar to the petitions filed by MCI and Supra in Docket No. 041269-TP, and therefore, for purposes of this recommendation the petitions should be addressed together.

DENIED

The dockets will be consolidated.

APPROVED

Following the decision in Issues 2 and 3, the Commissioners, on their own motion, reconsidered the decision in Issue 1 and approved staff's Recommendation.

COMMISSIONERS ASSIGNED: All Commissioners

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

Eric G. Grier
Duffy Brantley
Markus
James
John M. Dwyer

REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER: 03321

APR-5-05

VOTE SHEET

APRIL 5, 2005

Docket No. 041269-TP - Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc

Docket No. 050171-TP - Emergency petition of Ganoco, Inc. d/b/a American Dial Tone, Inc. for Commission order directing BellSouth Telecommunications, Inc. to continue to accept new unbundled network element orders pending completion of negotiations required by "change of law" provisions of interconnection agreement in order to address the FCC's recent Triennial Review Remand Order (TRRO).

Docket No. 050172-TP - Emergency petition of Ganoco, Inc. d/b/a American Dial Tone, Inc. for Commission order directing Verizon Florida Inc. to continue to accept new unbundled network element orders pending completion of negotiations required by "change of law" provisions of interconnection agreement in order to address the FCC's recent Triennial Review Remand Order (TRRO).

(Continued from previous page)

Issue 2: Should the Commission find that BellSouth and Verizon are required to continue accepting "new add" orders for the delisted UNEs identified by the FCC in its Triennial Review Remand Order after March 11, 2005?

Recommendation: If a timely petition is filed with the FCC requesting reconsideration and/or clarification of the TRRO before March 28, 2005, staff believes it would then be appropriate for the Commission to require the ILECs to continue accepting "new adds" for delisted UNEs, pursuant to the rates, terms and conditions set forth in their interconnection agreements, and subject to a true-up to an appropriate rate if the FCC later clarifies that "new adds" were to stop on March 11, 2005. If, however, reconsideration or clarification is not timely requested prior to this Commission's consideration of this matter, staff recommends that the arguments of both the ILECs and the CLECs find support in the language of the TRRO and, thus, both arguments have significant merit. Staff believes that attempts to divine the FCC's intent in this instance could run afoul of the D.C. Circuit Court's admonitions in USTA II that sub-delegation by the FCC in this area is unlawful. As such, staff recommends that the Commission decline to make a finding as to the FCC's intent and require that the status quo be maintained, subject to a true-up to an appropriate rate, until either clarification from the FCC is obtained or the parties are otherwise able to reach a business solution of this dispute, but in no event beyond the term of the 12-month transition period contemplated in the TRRO.

DENIED

Staff's recommendation was denied as follows:
With regard to high-capacity loops and transport, pending the outcome of BellSouth's appeal to the FCC, BellSouth will follow Mr. Lackey's outlined procedure that (1) the requesting CLEC will certify its order for loops and/or transport and (2) BellSouth will either provision the high-capacity loop or transport or will dispute such provisioning pursuant to the parties' existing dispute resolution process.

Issue 3: Should these dockets be closed?

Recommendation: No. Docket 041269-TL is currently set for hearing and should remain open to address the remaining open issues. Docket Nos. 050171-TP and 050172-TP should be held in abeyance pending clarification from the FCC or until the parties are otherwise able to reach a business solution of this dispute.

MODIFIED

Dockets 050171 and 050172 will be closed.

→ on switching, there shall be no new adds after March 11, 2005 (requesting carriers may not obtain new loop and switching as an unbundled network element)

1 he 12 -- before the end of the 12-month transition period just
2 rom personal experience.

3 CHAIRMAN BAEZ: And I was being facetious, but I
4 lon't think that the hopes would be too high. I would tend to
5 agree with Commissioner Deason that those things take a long,
6 long time. I mean, if you just look back a little bit, that
7 seems to be the case. But --

8 COMMISSIONER DAVIDSON: Mr. Chairman, I'm prepared to
9 take a motion at this point, if --

10 CHAIRMAN BAEZ: Commissioner Davidson.

11 COMMISSIONER DAVIDSON: I'll throw this out with just
12 a few preliminary thoughts. Although there have been some
13 motions to the FCC that address whether this TRRO is
14 self-effectuating, the FCC, to begin with, is not even under an
15 obligation to address the motions before it for reconsideration
16 or clarification. And if they choose to, it may certainly be
17 well outside the 12-month time frame.

18 The staff recommendation would cut off new adds at
19 one year from March 11, 2005, thus prolonging UNE-P and, I
20 think, promoting a policy that would defer investment in
21 facilities by CLECs.

22 Typically when there is doubt between provisions in
23 an order, the more specific prevails over the more general, and
24 I believe the order of the, the FCC in the TRRO is quite
25 specific. Indeed, in the changes to the Code of Federal

1 Regulations, the rules themselves, the rule now states that
2 requesting carriers may not obtain new local switchings as an
3 unbundled network element. The rule is clear; there's
4 additional language that I quoted to earlier and that the
5 parties have discussed that enhance that clarity. And the FCC
6 provides very clearly for a date certain. In Paragraph 235,
7 the FCC states that, "Given the need for prompt action, the
8 requirement set forth here shall take effect on March 11, 2005,
9 rather than 30 days after publication in the federal register."
10 So the FCC was making clear its intent that the rules take
11 effect immediately, and they modified the Code of Federal
12 Regulations, the governing rules, to provide that requesting
13 carriers may not obtain new local switching.

14 Again, if there's some conflict between the specific
15 and the general, as a basic principle of law the specific
16 should govern. Although staff pitches their rec as a status
17 quo rec, it's not, in my view, any status quo as determined by
18 the TRRO's intent that no new adds occur after March 11th. A
19 decision based on the staff rec, in my view, would be a policy
20 decision to allow UNE-P to grow for up to another year contrary
21 to the intent of the TRRO, contrary to the teachings of the
22 D.C. Circuit decision vacating the TRO, contrary to the
23 expressed intentions of, of numerous parties.

24 I think adding UNE-P customers at the very time when
25 CLECs are transitioning its embedded base off of UNE-P is both

1 unwise and I think it's unlawful under the Act. The FCC
2 clearly wanted prompt action, prompt, clear action, and I think
3 we have an opportunity to do that now.

4 Sort of in dealing with the issues, I think we do
5 have to distinguish between loops, transport and switching.
6 Those are the three essential elements of the UNE platform.
7 The FCC was crystal clear on switching. It wasn't as clear and
8 provided for certain processes on loops and transport.

9 So my motion would be to deny staff on Issue 2 as
10 follows: With regard to high-capacity loops and transport, the
11 motion would be, pending the outcome of BellSouth's appeals to
12 the FCC and if, if Verizon has appeals, those appeals,
13 BellSouth would follow the procedure outlined by Mr. Lackey
14 that, one, the requesting CLEC will certify its order for loops
15 and/or transport, and, two, that BellSouth will either
16 provision the high-capacity loops and/or transport pursuant to
17 that certification, or BellSouth will dispute such provisioning
18 pursuant to the parties' existing dispute resolution
19 provisions.

20 On switching, the motion would be as follows: As of
21 March 11th, 2005, there shall be no new adds. In other words,
22 and using the exact words of the TRRO, requesting carriers may
23 not obtain new local switching as an unbundled network element
24 after March 11th, 2005. As the FCC stated in the TRRO at
25 Paragraph 204, the disincentives to investment posed by the

1 availability of unbundled switching in combination with
2 unbundled loops and shared transport justify a nationwide bar
3 on such unbundling.

4 Commissioners, in my view the rules are crystal clear
5 on switching. Of course, nothing in this motion prevents the
6 parties from negotiating commercial agreements to address the
7 various issues on the table. BellSouth and CLECs within its
8 territory have already reached agreements regarding a very
9 substantial percentage of the switching UNEs that are on the
10 table. I note that all parties have a good-faith obligation to
11 negotiate, and if a party can establish that the other is not
12 negotiating in good faith, I believe that that is actionable.

13 Expectations of continuing to receive switching as a
14 UNE is patently unreasonable in view of the FCC's remand order,
15 the D.C. Circuit decision, the TRO. I think on switching the
16 law is clear, and that is my motion, Mr. Chairman.

17 COMMISSIONER EDGAR: A question.

18 CHAIRMAN BAEZ: Go ahead, Commissioner Edgar.

19 COMMISSIONER EDGAR: Commissioner Davidson, would you
20 repeat for me just the portion of the motion itself dealing
21 with switching?

22 COMMISSIONER DAVIDSON: Yes. The motion on switching
23 would be as follows: As of March 11th, 2005, there shall be no
24 new adds of local switching as an unbundled network element.
25 And, in other words, in using the exact words of the TRO,

1 specifically the, the existing rules and the federal, Code of
2 Federal Regulations, requesting carriers may not obtain new
3 local switching as an unbundled network element. And that's in
4 the amendment to Part 1 -- Part 51 of Title 47.

5 And on high-capacity loops and transport, the other
6 two elements of the UNE platform, it would follow the, the
7 concession of BellSouth that they would accept certification by
8 the CLECs and either provide the UNE or file a dispute
9 resolution that exists in the parties' agreements.

10 CHAIRMAN BAEZ: That would be pending appeal, I
11 guess?

12 COMMISSIONER DAVIDSON: Yes, Chairman, pending
13 appeal.

14 CHAIRMAN BAEZ: Is that, is that -- was it
15 represented accurately, Mr. Lackey?

16 MR. LACKEY: (Microphone not on.)

17 CHAIRMAN BAEZ: Well, how did he characterize your --
18 he put your name on the proposal, so I think you --

19 MR. LACKEY: Well, I, I don't -- I think the truth of
20 the matter is if they certify, if that's what you're asking me
21 about, if they certify, we have to provision and then dispute.

22 CHAIRMAN BAEZ: Correct.

23 COMMISSIONER DAVIDSON: And that's fine. Perfect.
24 My motion would so reflect that.

25 CHAIRMAN BAEZ: Okay.

1 COMMISSIONER DAVIDSON: Provisioning and then
2 ispute.

3 CHAIRMAN BAEZ: Commissioners, comments or, or a
4 second.

5 COMMISSIONER DEASON: Mr. Chairman, I'm going to
6 second the motion, but before, before I do, I'd like to, I
7 guess, editorialize a little bit.

8 We're here once again as a state commission being
9 asked to read the minds of the FCC, which is a constantly
10 moving target, and to try to -- in this case they have issued
11 an order, which is a remand order, which one would think would
12 be crystal clear.

13 CHAIRMAN BAEZ: Settle the question once and for all.

14 COMMISSIONER DEASON: And we're here once again
15 trying to read the minds of the FCC. And I think this is a
16 further erosion of this Commission's, what historically was an
17 important substantive role for this Commission when it came to
18 implementing telecommunications policy, and we're being
19 relegated to trying to read an order which should be clear on
20 its face and trying to make an interpretation consistent with
21 that.

22 Given that, it is very appealing, no pun intended,
23 appealing to follow the lead of the Virginia Commission and
24 say, we're not going to do it. FCC, you should write your
25 orders clearly, and don't put us in the situation of trying to

1 read your minds and interpret your orders when they should be
2 clear on their face. If this Commission has jurisdiction in
3 areas, it should be clearly stated. If the FCC wants us to
4 implement part of their guidance, they should delineate what
5 the jurisdiction is and the criteria we should apply, let us
6 listen to the evidence and let us make a decision. That's not
7 what we're doing here today. We're here because these parties
8 can't agree between themselves what is the policy of the FCC
9 because the FCC order is not clear. So they come to us, and
10 they have also gone to the FCC.

11 As you can, you know, plainly see, once again I am
12 frustrated by this process we're having to follow. But I do
13 agree with the motion. I believe that a reading of the order
14 that the most -- for us to give meaning to it and for it to be
15 as internally consistent as it can be, that the motion is the
16 proper interpretation. And I also in this, as I indicated
17 earlier, I think that our role as policymakers is getting
18 smaller and smaller when it comes to telecommunications. But
19 to the extent we have any role remaining, I think it's the
20 correct policy as well. So for those reasons, I second the
21 motion.

22 CHAIRMAN BAEZ: Yeah. Briefly, this, this -- I would
23 agree with all of, most, if not all, of what you said,
24 Commissioner Deason.

25 The, the key point for me is to, you know, we have

1 the FCC order. If I had my druthers, this wouldn't be before
2 us. But here it is. And I think walking away from it is on
3 some level irresponsible, no, no matter the fact that it is
4 frustrating trying to divine what the FCC meant to say.

5 Having said that, you do have what are arguably
6 conflicting, conflicting terms. And part of our
7 responsibility, if we choose to accept it, is to try and make
8 sense and try and reconcile all of, all of those terms as best
9 we can. We are only doing the best that we can with what we're
10 given. But having said that, there's a motion, unless,
11 Commissioner, if you have comments quickly before we --

12 COMMISSIONER BRADLEY: Just, just a comment. I think
13 that the FCC, the order that the FCC, the FCC sent down was
14 intended to create just what, just what has happened here
15 within this Commission. And I think that the motion itself is,
16 is an excellent compromise between all, all positions, and it
17 moves the transition from, from UNE-P in the right direction.
18 I think that the FCC has made it very clear that it is
19 interested in competition that's facilities-based, and I think
20 that this motion keeps the ball moving in that direction. So I
21 think it's an excellent motion.

22 CHAIRMAN BAEZ: All right. Motion and a second. All
23 those in favor, say aye.

24 (Unanimous affirmative vote.)

25 CHAIRMAN BAEZ: Thank you all, parties, for the

1 omments, and thank you, staff

2 MR. TEITZMAN: Chairman, the close docket issue. I
3 just want to -- this is a close docket issue.

4 CHAIRMAN BAEZ: Do you want to, do you want to move
5 -

6 COMMISSIONER DAVIDSON: Move staff to close the
7 docket.

8 MR. TEITZMAN: Thank you.

9 CHAIRMAN BAEZ: Move staff.

10 COMMISSIONER DEASON: Second.

11 CHAIRMAN BAEZ: Motion and a second. Without
12 objection, show Issue 3 approved.

13 COMMISSIONER DEASON: Wait, now, you were being
14 facetious about closing the docket.

15 SPEAKER: The dockets were consolidated. Are we
16 closing the consolidated dockets?

17 CHAIRMAN BAEZ: I'm sorry. Let's back up.

18 COMMISSIONER DEASON: It's set for -- it's currently
19 set for hearing.

20 COMMISSIONER DAVIDSON: No, well, all right. Let's
21 strike that. What will we do on this, Mr. Melson, because
22 we've, I guess we've resolved, I thought, the issues that were
23 the subject of this particular docket.

24 MR. MELSON: You resolved the issues in 050171 and
25 172. The 041269 is set for hearing and it has others.

1 COMMISSIONER DAVIDSON: So would we move staff --
2 would we move, would we move to close the two dockets you
3 referenced?

4 MR. MELSON: Yes, sir.

5 COMMISSIONER DAVIDSON: And move forward on the
6 consolidated dockets.

7 MR. MELSON: Well, they're -- at that point there
8 really would no longer be a consolidated docket.

9 COMMISSIONER DAVIDSON: Okay.

10 MR. MELSON: The two closed ones would have dropped
11 out.

12 COMMISSIONER DAVIDSON: All right.

13 CHAIRMAN BAEZ: Okay. So we --

14 COMMISSIONER DAVIDSON: Move staff to close the
15 dockets referenced by Mr. Melson.

16 CHAIRMAN BAEZ: We have with one fell swoop rendered
17 our decisions moot within the same item. This is, this is
18 Borgean almost in its --

19 UNIDENTIFIED SPEAKER: Not the first time it's
20 happened.

21 CHAIRMAN BAEZ: Exactly.

22 COMMISSIONER DAVIDSON: And it certainly won't be the
23 last.

24 CHAIRMAN BAEZ: All right. So can we let our vote
25 reflect whatever is consistent with, with our vote on Issue 2

1 actually. I mean, if it's rendered --

2 MR. MELSON: I think actually the cleanest thing,
3 frankly, would be to reconsider the Issue 2 and not consolidate
4 the dockets, and then you can close the two much more easily.

5 CHAIRMAN BAEZ: All right. Do we have a motion for
6 reconsideration on Issue 1?

7 COMMISSIONER DAVIDSON: Motion to reconsider Issue 1

8 CHAIRMAN BAEZ: All right.

9 COMMISSIONER BRADLEY: Second.

10 CHAIRMAN BAEZ: All right. And a second. All those
11 in favor, say aye.

12 (Unanimous affirmative vote.)

13 CHAIRMAN BAEZ: And now do we have a motion on
14 Issue 1, which I think you can --

15 COMMISSIONER DAVIDSON: Motion to move staff.

16 COMMISSIONER DEASON: Second.

17 CHAIRMAN BAEZ: And a second All those in favor,
18 say aye.

19 (Unanimous affirmative vote.)

20 CHAIRMAN BAEZ: Okay. Now we got that straight. I
21 have one request. I don't know -- there will be an order
22 issued on this. I, I, I can only speak for myself, but I'll
23 extend the same opportunity to the other Commissioners, if you
24 can circulate the order around and let us look at it.

25 MR. MELSON: Absolutely.

1 CHAIRMAN BAEZ: Thank you. Ladies and gentlemen, we
2 are at high noon, and so if it's all right with you, we're
3 going to break for an hour and come back at 1:00 where we'll
4 take up the remaining items.

5 (Agenda Item 4 concluded.)
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CERTIFICATE OF REPORTER

I, LINDA BOLES, RPR, Office of Hearing Reporter Services, PSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceedings, Pages 1 through 102, were transcribed from cassette tape.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 13TH DAY OF APRIL, 2005.

Linda Boles

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